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18 and BIG LOTS F&S, INC.

19 **UNITED STATES DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**

21
22 ROXANNE SLUSHER, on behalf of herself,
all others similarly situated, and the general
23 public,

24 *Plaintiff,*

25 vs.

26 BIG LOTS STORES, INC., an Ohio
corporation; BIG LOTS F&S, INC., an Ohio
27 corporation; and DOES 1 through 50,
inclusive,

28 *Defendants.*

Case No. 17-cv-06030-RS

**JOINT STIPULATION REQUESTING
TRANSFER PURSUANT TO 28 U.S.C.
§ 1404(a); ORDER**

[Filed concurrently with [Proposed] Order]

Judge: Hon. Richard Seeborg

Action Filed: September 21, 2017

1 This Stipulation is made by and between Plaintiff ROXANNE SLUSHER (“Plaintiff”) and
2 Defendants BIG LOTS STORES, INC. and BIG LOTS F&S, INC. (“Defendants”) (collectively,
3 the “Parties”). The Parties, through their respective counsel of record, hereby stipulate to and
4 request the Court to transfer venue to the United States District Court for the Central District of
5 California pursuant to 28 U.S.C. § 1404(a). In support, the Parties respectfully show the Court the
6 following:

7 The purpose of the requested transfer is to facilitate a consolidated settlement of this case
8 with another case pending against Defendants in the Central District of California: *Viola Hubbs v.*
9 *Big Lots Stores, Inc., et al*, Case No. 2:15-cv-01601JAK (ASx) (the “*Hubbs* case”). The cases
10 include allegations (which Defendants deny) that Defendants violated California wage-hour laws
11 by failing to (1) pay overtime; (2) pay minimum wages; (3) provide meal periods and/or meal
12 period premium payments; (4) provide rest periods and/or rest period premium payments;
13 (5) provide compliant wage statements; (6) pay all wages upon termination of employment to
14 former employees; (7) timely pay wages during employment; (8) properly compensate for split
15 shifts; and (9) provide suitable seating to employees. Plaintiffs also assert claims under the Private
16 Attorneys General Act, California Labor Code sections 2698, et seq. (“PAGA”) and California
17 Business & Professions Code sections 17200, et seq., as well as other damages.

18 Counsel for Plaintiffs and Defendants in this case and in the *Hubbs* case have executed a
19 Settlement Agreement that, upon its final approval and becoming effective on the terms and
20 conditions stated therein, will fully and finally resolve the claims in all of these cases against
21 Defendants. In the Settlement Agreement, the Parties agreed that preliminary and final approval
22 will be sought in the United States District Court for the Central District of California, where the
23 *Hubbs* case was pending, which litigation was furthest advanced at the time that the Parties
24 executed the Settlement Agreement. A motion for preliminary approval of the Settlement
25 Agreement will be filed in the Central District of California where this case will be consolidated
26 with the *Hubbs* case for settlement purposes before the Hon. Judge John A. Kronstadt.

27 Under 28 U.S.C. § 1404(a), “[f]or the convenience of parties and witnesses, in the interest
28 of justice, a district court may transfer any civil action to any other district or division where it

1 might have been brought.” Under either diversity jurisdiction (28 U.S.C. § 1391(a)) or federal
2 question jurisdiction (28 U.S.C. § 1391(b)), an action may be brought “in (1) a judicial district
3 where any defendant resides, if all defendants reside in the same State, [or] (2) a judicial district in
4 which a substantial part of the events or omissions giving rise to the claim occurred. . . .” A
5 corporate defendant is “deemed to reside in any judicial district in which it is subject to personal
6 jurisdiction at the time the action [was] commenced.” *Id.* at (c). This action could have been
7 brought in the District for Central District of California, where Defendants are subject to personal
8 jurisdiction. Although Plaintiffs initially chose to bring this action in this District, for purposes of
9 settlement only, transferring it to the Central District of California to facilitate settlement will
10 serve the interests of justice.

11 “[S]ince [Section] 1404(a) looks to sound judicial administration, the court may order a
12 transfer whenever the circumstances justify the requirement. . . .” *Blumenthal v. Mgmt. Assistance,*
13 *Inc.*, 480 F. Supp. 470, 471 (N.D. Ill. 1979). In addressing a motion to transfer venue under
14 Section 1404(a), three elements must be established: “(1) that venue is proper in the transferor
15 district; (2) that the transferee district is one where the action might have been brought; and
16 (3) that the transfer will serve the convenience of the parties and witnesses and will promote the
17 interest of justice.” *Vu v. Ortho-McNeil Pharm., Inc.*, 602 F. Supp. 2d 1151, 1155-56 (N.D. Cal.
18 2009) (quoting *Goodyear Tire & Rubber Co. v. McDonnell Douglas Corp.*, 820 F. Supp. 503, 506
19 (C.D. Cal. 1992)). Once venue is determined to be proper in both districts, courts use the
20 following factors to evaluate whether a transfer of venue would be more convenient to the parties
21 and the witnesses and would promote the interests of justice: (1) plaintiffs’ choice of forum,
22 (2) convenience of the parties, (3) convenience of the witnesses, (4) ease of access to the evidence,
23 (5) familiarity of each forum with the applicable law, (6) feasibility of consolidation with other
24 claims, (7) any local interest in the controversy, and (8) the relative court congestion and time of
25 trial in each forum. *Vu*, 602 F. Supp. 2d at 1156.

26 Here, the Parties are requesting the change of venue, for their convenience, to the Central
27 District of California to facilitate a settlement of multiple cases in a single proceeding, which
28 would constitute the overriding application of the “interests of justice” consideration. *See Mercury*

1 *Serv., Inc. v. Allied Bank of Texas*, 117 F.R.D. 147, 154–55 (C.D. Cal. 1987), *aff’d*, 907 F.2d 154
2 (9th Cir. 1990) (recognizing that the ultimate goal of a court in analyzing a motion to transfer
3 venue is to serve both the convenience of the parties and witnesses, as well as the interests of
4 justice); *see also United States ex rel. Ondis v. City Woonsocket*, 480 F. Supp. 2d 434, 436 (D.
5 Mass. 2007) (“The fundamental concern manifest in § 1404(a) is that litigation be conducted in the
6 federal court which will best serve the ‘interest of justice.’”). Additionally, inasmuch as the
7 requested transfer is for purposes of facilitating settlement, ease of access to proof and the
8 convenience of the witnesses are irrelevant. Moreover, both forums are familiar with the
9 applicable law, so this factor similarly does not weigh against transfer.

10 Accordingly, the Parties hereby stipulate to and respectfully request that this Court transfer
11 this case to the United States District Court for the Central District of California. A Proposed
12 Order is attached hereto as Exhibit A.

13 IT IS SO STIPULATED.

14
15
16 DATED: December 12, 2019

SETAREH LAW GROUP

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18
19 /s Thomas Segal (with permission)
20 SHAUN SETAREH
21 THOMAS SEGAL

22
23 Attorneys for Plaintiff
24 ROXANNE SLUSHER

25
26 DATED: December 12, 2019

VORYS, SATER, SEYMOUR & PEASE LLP

27
28 /s George L. Stevens
MARK A. KNUEVE
DANIEL J. CLARK
GEORGE L. STEVENS

Attorneys for Defendants BIG LOTS STORES, INC.,
and BIG LOTS F&S, INC.

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FILER'S ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3), the filer of this document attests that concurrence in the filing of this document has been obtained from the other signatory above.

DATED: December 12, 2019

/ s / G e o r g e L. S t e v e n s
GEORGE L. STEVENS

EXHIBIT A

ORDER

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Having considered the Stipulation between counsel for Plaintiff ROXANNE SLUSHER and Defendants BIG LOTS STORES, INC. and BIG LOTS F&S, INC, and good cause appearing therefore, the Parties' Stipulation is hereby **GRANTED / DENIED**. This Court hereby ORDERS:

1. That this matter is **TRANSFERRED** to the United States District Court for the Central District of California.
2. The Clerk is directed to provide a copy of this Order to the Clerk for the Central District of California and to the chambers of the judge (Judge John A. Kronstadt) there assigned to the *Hubbs* case.

IT IS SO ORDERED.

DATED: December 13, 2019



RICHARD SEEBORG
United States District Judge